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22 November 2019

Justice Ross, President  
Fair Work Commission  
80 William Street  
East Sydney NSW 2011

**By email:** amod@fwc.gov.au

Your Honour

**4 yearly review of modern awards- National Training Wage Schedule (AM2016/17 & AM2016/15) - Joinery Building Trades Award 2010 - Joint Report**

HIA refers to the abovementioned matter, and the CFMMEU correspondence of 15 November 2019 (**CFMMEU Correspondence**).

In accordance with the direction from the Commission set out during the conference held on 23 August 2019 (**the Conference**), the parties present (HIA, MBA and CFMMEU) agreed to undertake a process to present an Agreed Joint Report (**Agreed Joint Report**) to the Commission.<sup>1</sup>

The CFMMEU Correspondence states that an Agreed Joint Report could not be reached between the parties.

HIA participated in discussions involving the preparation of an Agreed Joint Report, including responding to the CFMMEU Draft Schedule dated 27 September 2019 (**CFMMEU Draft Schedule**) for the *Joinery Building Trades Award 2010* (**Joinery Award**), specifically noting:

1. The CFMMEU Draft Schedule did not suggest the insertion of any additional terms, rather suggested the removal of provisions which are said to have no application. It was yet to be established by the CFMMEU why the Joinery Award cannot include the NTW schedule by reference to the *Miscellaneous Award 2010* (**Miscellaneous Award**) ;
2. HIAs continued reliance on submissions of 17 March 2017, and 8 September 2017, supporting the removal of the National Training Wage Schedule (**NTW Schedule**) from the Joinery Award and incorporating the NTW Schedule by reference to the Miscellaneous Award;
3. If the Commission is minded to adopt the CFMMEU preferred approach, HIA would not have anything additional to add to the CFMMEU's Draft Schedule; and
4. It is HIAs preference for the matter to be determined on the papers.

On 12 November 2019, the CFMMEU circulated a draft report (**Draft Report**). On 15 November 2019, HIA responded highlighting some concerns regarding the content and general approach within the Draft Report. HIA offered to compile an amended report and to liaise with the Commission about the status of the matter.

This approach was rejected by the CFMMEU, who elected to file the Draft Report without any further discussion.

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<sup>1</sup> Paragraphs 14-16, Transcript of proceedings.

To assist the Commission HIA has compiled the **attached** NTW Summary Document (Attachment A). The NTW Summary Document provides an overview of the progress of the matter to date.

## Next Steps

*CFMMEU to file a variation application*

During proceedings held on 7 September 2018 the Commission indicated that the CFMMEU would be required to make an application to vary the Joinery Award:

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*JUSTICE ROSS: All right. Mr Maxwell, I would encourage you to have discussions with those in an interest in this award and the other awards that you have an interest in. If you're in fact wanting to vary the schedule you are going to have to make an application to vary it. And if that can be done by consent with the other parties then it will obviously be able to be dealt with more quickly. But it was about retaining what you've currently got in the award. As I mentioned before, if you want to vary what you currently have you will need to make an application to do that.*

To date the CFMMEU is yet to file such a variation application.

*Determination of the matter*

While HIA rejects the assertions made in the CFMMEU Correspondence that '*HIA requires the matter in regard to the Joinery and Building Trades Award 2010 to be fully argued and decided on by the Full Bench*', HIA would see that the issuance of further directions regarding the filing of materials of use.

This is particularly the case given the CFMMEU have not filed a variation application or materials in support of their proposed approach. Parties should then be provided an opportunity to respond to those materials. Please find **attached** (Attachment B) draft directions for consideration.

Further, given the protracted nature of this matter, and subject to the views of the Full Bench, HIA is comfortable for the matter to be determined the on the papers.

Yours sincerely

HOUSING INDUSTRY ASSOCIATION LIMITED



Laura Regan  
Assistant Director- Industrial Relations

## ATTACHMENT A

### 4 yearly review of Modern Awards Plain Language Drafting National Training Wage

#### Summary as at 22 November 2019

As it relates to:

- *Building and Construction General Onsite Award 2010* (Onsite Award);
- *Joinery Building Trades Award 2010* (Joinery Award); and
- *Mobile Crane Award 2010* (Mobile Crane Award).

Document Title	Parties	Summary
<a href="#">FWC Statement</a> – 6 July 2016		<p>The Full Bench proposed that the NTW schedule would be standardised and removed from all awards except the <i>Miscellaneous Award 2010 (Misc Award)</i>, and incorporated back into all other awards by reference to the Misc Award. Where industries or occupations have specific training needs or provisions these may be retained within the body of the award.</p> <p>At paragraph 24 parties were provided an opportunity to make written submissions on the proposal addressing:</p> <ul style="list-style-type: none"> <li>• any changes required to the standard NTW Schedule as set out in Attachment C including: <ul style="list-style-type: none"> <li>○ updates or corrections to names of various training bodies and legislation;</li> <li>○ the addition of any training packages established since the commencement of modern awards; and</li> <li>○ the deletion of any training packages no longer offered;</li> </ul> </li> <li>• comments on the form of the proposed reference term and Annual Wage Review determinations; and</li> <li>• objections to the removal of the NTW Schedule from a particular modern award.</li> </ul>
Submissions in reply	<a href="#">CFMMEU</a> – 28 July 2016	<ul style="list-style-type: none"> <li>• Submits that the NTW Schedule should be retained in a modified form in the On-site Award, Joinery Award; and the Mobile Crane Award to only include those parts of the current Schedule that are necessary.</li> </ul>
	<a href="#">AIG</a> - 29 July 2016	<ul style="list-style-type: none"> <li>• Has not identified any difficulties with the approach of including a National Training Wage Schedule in the Misc Award 2010, with other awards incorporating the Schedule by reference;</li> <li>• Raised concerns with inconsistent terminology in different versions of the Schedule concerning the definitions of “traineeship” and “training package”, with some awards referring to the National Quality Council and others referring to the National Skills Standards Council.</li> </ul>
	<a href="#">AMWU</a> – 29 July 2016	<ul style="list-style-type: none"> <li>• Supports the CFMMEU submissions; and</li> <li>• Raises concerns with inconsistent terminology.</li> </ul>

	<a href="#"><u>CFMMEU</u></a> - 9 December 2016	<ul style="list-style-type: none"> <li>• Provided a summary of the proposed changes to the NTW schedule for each of these Awards.</li> </ul>
	<a href="#"><u>AMWU</u></a> - 5 December 2016	<ul style="list-style-type: none"> <li>• Confirmed view industry schedules should remain for Airline Operations- Ground Staff Award 2010; Airport Employees Award 2010; Onsite Award; Food beverage and Tobacco Manufacturing Award 2010; Manufacturing and Associated Industries and Occupations Award 2010; Sugar Industry Award 2010; and Surveying Award 2010.</li> </ul>
<a href="#"><u>FWC Statement</u></a> - 23 February 2017		<ul style="list-style-type: none"> <li>• At paragraph 8 the Full Bench expressed a provisional view that where the parties requested, the NTW schedule be tailored to a particular award.</li> <li>• Interested parties were invited parties to make submissions on the plain language re-draft of the NTW schedule and the form of the NTW schedule to be inserted in the Joinery and Mobile Crane Hiring Awards.</li> </ul>
Submissions	<a href="#"><u>HIA</u></a> - 17 March 2017	<ul style="list-style-type: none"> <li>• Interest in Onsite and Joinery Awards;</li> <li>• Opposed the CFMMEU view that there are circumstances which warrant a different approach in the Onsite and Joinery Awards in relation to the NTW Schedule. There is no substantive evidence to support such a view;</li> <li>• Noted the Full Bench adopted the CFMMEU approach for award specific schedules, without providing opportunity for further submission;</li> <li>• Submitted the CFMMEU approach is at odds with the FWC objective of '<i>reducing award length and complexity</i>';</li> <li>• There is no award specific content in the Joinery Award in relation to the NTW, as such no reason why the NTW schedule could not apply in full;</li> <li>• Extracting the 'relevant' training packages and wage rates and including those in a modified schedule is an unnecessary duplication; and</li> <li>• Supported the changes proposed by the FWC to standardise the NTW Schedule, and remove the NTW from all Awards, save for the Misc Award, and incorporate the NTW schedule by reference.</li> </ul>
	<a href="#"><u>MBA</u></a> - 17 March 2017	<ul style="list-style-type: none"> <li>• Interest in Onsite and Joinery Awards;</li> <li>• Raised concerns with procedural process, did not file response to July Statement response as did not have any technical amendments to propose, nor did object to the inclusion of the standard NTW Schedule in the Onsite or Joinery Awards;</li> <li>• Made submissions in support of the Commission's proposal during the award-stage review of the Construction Awards;</li> <li>• Opposes CFMMEU claim, urges Commission to re-consider carving out the awards from the standard approach;</li> <li>• Provides general commentary re the Plain Language NTW schedule;</li> <li>• Opposes the CFMMEU claim that the only wage provisions for the NTW Schedule having any application under the Onsite award were the AQF Certificate Level 4 traineeship and school-based traineeship rates;</li> <li>• The standard NTW schedule provides for time-based (as opposed to competency-based) progression. MBA understands that the CFMMEU opposes progression that is time-based and supports instead a competency-based model.</li> </ul>
	<a href="#"><u>CFMMEU</u></a> - 24 March 2017	<ul style="list-style-type: none"> <li>• Attached proposed tailored schedules for the Onsite, Joinery, and Mobile Crane Awards, tailored based on the plain language re-draft published by the Full Bench.</li> <li>• Noted some of the changes to the definitions in the tailored schedules would also have application to the schedule proposed to be included in the Misc Award.</li> </ul>
	<a href="#"><u>AIG</u></a> - 24 March 2017	<ul style="list-style-type: none"> <li>• Provided submission on wording for the standard NTW schedule;</li> <li>• Noted intention to make a reply submission in response to various submissions filed in this regard by the other parties that proposed a separate NTW Schedule.</li> </ul>
Submissions in reply	<a href="#"><u>CFMMEU</u></a> - 6 April 2017	<ul style="list-style-type: none"> <li>• Disagree that the CFMMEU approach is at odds with the objective of reducing award length and complexity;</li> <li>• Submits in relation to Joinery Award, wage level C has no application and only two training packages are relevant;</li> </ul>

		<ul style="list-style-type: none"> <li>• Uncertain as to the jurisdictional basis on which one modern award can incorporate a term from the Misc Award (which is expressed to cover employees who are not covered by any other modern award pursuant to s.163(4) of the FW Act);</li> <li>• Provided general commenting to numerous drafting matters relating to the MBA submissions for the standard NTWS;</li> <li>• Submits in response to MBA Submission reference to “<i>many members who engage trainees under AQF Certificate Level I-III traineeship</i>”, the issue is are those trainees covered by the training packages relevant to the classifications covered by the On-site Award and the wage rates included in clause 28 of that award.</li> <li>• CFMMEU preferred methods of progression are not relevant to these proceedings.</li> <li>• In response to AIG submissions, CFMMEU oppose any changes that may affect entitlements under the NTW Schedule.</li> </ul>
	<a href="#"><u>AMWU- 7 April 2017</u></a>	<ul style="list-style-type: none"> <li>• Commentary regarding numerous of AIG related items;</li> <li>• In relation to MBA submission item 3.4, opposed on the basis that the reference to ‘the experience level of the trainee’ is not a reference to the competency of the trainee but to the ascribed experience accruing over time post leaving school.</li> <li>• Noted in response to CFMMEU submission, the AMWU has made application during the current review of the Onsite Award to vary Schedule B.2.2 to provide for the classification of General Technician at the CW2 level, equivalent to the C11 Level in the Manufacturing Award. The inclusion of this classification in the Award would provide a landing spot or relevant classification for the articulation of an AQF II MSL Laboratory Operations Trainee, post traineeship;</li> <li>• Proposed to include of the Metal and Engineering Technical Traineeship, AQF III in Onsite Award schedule;</li> </ul>
	<a href="#"><u>AIG- 11 April 2017</u></a>	<ul style="list-style-type: none"> <li>• Submitted not convinced that award-specific NTWS are required in any awards, including any of the awards proposed by the AMWU and CFMMEU. The unions’ proposal would make the modern award system more complex and hence the proposal is inconsistent with the modern awards objective.</li> <li>• The wording in any award-specific NTWS cannot be settled until the specific qualifications that will be included in each award-specific Schedule are determined. The various changes to the award-specific NTWS proposed by the AMWU and CFMMEU relate to qualifications in the standard NTWS that the unions want to delete. In many cases the unions have proposed the deletion of lower level qualifications, with lower wage rates. The effect of this would be to require employers to pay higher wage rates to many trainees.</li> </ul>
<a href="#"><u>FWC Draft Summary of Submissions</u></a> – 20 April 2017		
<a href="#"><u>FWC Decision</u></a> - 9 June 2017		<ul style="list-style-type: none"> <li>• At paragraph 3 the Full Bench confirmed that award-specific schedules will be maintained in nine modern awards including the Onsite Award, Mobile Crane Award, and Joinery Award</li> <li>• At paragraph 15 the Full Bench confirmed that the terms of award-specific NTW Schedules to be inserted into the nine modern awards will be dealt with after finalisation of the plain language NTW Schedule in the Misc Award 2010:</li> </ul>
<a href="#"><u>FWC Statement</u></a> - 28 August 2017		<ul style="list-style-type: none"> <li>• The Statement annexed draft award specific NTW schedules, which were based on the union drafts.</li> <li>• Parties were asked to provide submissions in relation to AIG proposed inclusions exclusions in draft schedules. Parties were also invited to file submissions on award specific schedules, and opposition to award specific schedules.</li> </ul>
<b>Submissions</b>	<a href="#"><u>CFMMEU- 8 September 2017</u></a>	<ul style="list-style-type: none"> <li>• Supports Draft schedules, save minor amendments.</li> <li>• In response to AMWU position CFMMEU does not oppose the inclusion of “Metal and Engineering (Technical) III” in the table under Wage level A.</li> </ul>

	<a href="#"><u>AIG</u></a> - 8 September 2017	<ul style="list-style-type: none"> <li>Continues to reply upon submissions, not convinced that Award-specific National Training Wage Schedules are required in any awards. The unions' proposal would make the modern award system more complex and hence the proposal is inconsistent with the Modern Awards objective.</li> <li>If primary submission is not accepted and the Commission decides that Award-specific National Training Wage Schedules are necessary to achieve the modern awards objective, provides suggested amendments to the Onsite and Mobile Crane Award draft schedules.</li> </ul>
	<a href="#"><u>MBA</u></a> - 8 September 2017	<ul style="list-style-type: none"> <li>Continues to support Commission's proposal to delete the specific schedules attached to the On-Site and Joinery Awards and replace them with a reference to the Misc Award. Continue to maintain this position and submit that there is no basis to justify a deviation from the Commission's proposed model solution.</li> <li>If Commission deviates from the standard approach, provides some referencing amendments for the draft NTW schedule for the Onsite Award.</li> </ul>
	<a href="#"><u>HIA</u></a> – 8 September 2017	<ul style="list-style-type: none"> <li>Confirmed continues to rely upon submissions of 17 March 2017.</li> <li>Confirmed if the Commission is minded to adopt the schedules provides some suggested amendments to the Onsite Award.</li> </ul>
	<a href="#"><u>AMWU</u></a> – 8 September 2017	<ul style="list-style-type: none"> <li>The AMWU supports the inclusion of award specific schedules in the awards listed the Full Bench statement, and generally agrees with the content of the draft award-specific schedules as published in the Full Bench Statement, however makes some minor comments;</li> <li>Submits the qualifications outlined in paragraphs 18-22 of Ai Groups submission should not be included, however provides some exceptions (no Onsite, Joinery or Mobile Crane exceptions).</li> </ul>
Submissions in reply	<a href="#"><u>AMWU</u></a> - 21 September 2017	<ul style="list-style-type: none"> <li>In response to the AIG submission, AMWU has examined the relevance of those qualifications and consistent with the AMWU submission dated 07th April 2017, agrees that Civil Construction AQF III and Metal and Engineering (Technical) AQF III should be included in the Building Award schedule. The remaining qualifications that AiG submit are relevant to the Building Award, do not lead to a classification contained within that award, and on that basis, are not relevant or necessary for inclusion in the award-specific schedule.</li> </ul>
	<a href="#"><u>CFMMEU</u></a> - 22 September 2017	<ul style="list-style-type: none"> <li>Continues to rely upon 6 April 2017 submissions in response to the HIA and MBA submissions of 17 March 2017;</li> <li>Noted agreed submissions between AIG and CFMMEU as to terminology;</li> <li>Does not oppose the inclusion of the Transport and Logistics Certificate III under Wage Level A, and the Transport and Logistics Certificates I and II under Wage level B.</li> <li>Identifies the need to include Metal and Engineering (Technical) Certificate III level under Wage level A;</li> <li>Opposes the inclusion of Metal and Engineering (Technical) Certificate II under Wage Level A. the certificate II qualifications under the Metal and Engineering training package (MEM05) relate to production and process workers which have no direct relevance to on-site construction work;</li> <li>Submits that there is no need to add the Civil Construction qualifications under Wage Level A and B as they are already included. There is no longer a separate civil construction training package and the civil construction qualifications are now covered by the Resource and Infrastructure Industry training package.</li> </ul>
	<a href="#"><u>AIG</u></a> - 22 September 2017	<ul style="list-style-type: none"> <li>Confirmed only proposed the inclusion of a qualification in the NTWS in an award, if the qualification appeared to be relevant to the industries, occupations and classifications covered to the award.</li> <li>Noted the deletion of any relevant qualification from the NTWS in any award could have the effect of removing trainees undertaking those qualifications from the coverage of the award. It would be harmful to businesses and their employees if</li> </ul>

		<p>award coverage of particular trainees was lost through the plain language re-drafting exercise. If award coverage is lost for a trainee, there is a very real prospect that the trainee would lose his or her employment.</p> <ul style="list-style-type: none"> <li>• Noted the deletion of any qualification from the NTWS in any award, that had the effect of removing a trainee from the coverage of the award, would offend s.163(1) of the Fair Work Act 2009.</li> <li>• It is vital that the Commission include each existing qualification in the NTWS in each award unless it is obvious that the award cover trainees undertaking a particular qualification.</li> </ul>
<a href="#"><u>FWC Statement- 30 August 2018</u></a>		<ul style="list-style-type: none"> <li>• In paragraph 8, it was confirmed a mention is to be held on 7 September 2018 at 10am with parties to address the Full Bench provisional view, any opposition, and next steps.</li> </ul>
<a href="#"><u>FWC Draft Summary of Submissions- 30 August 2017</u></a>		<p>CFMMEU responded on 6 September 2018 submitting:</p> <ul style="list-style-type: none"> <li>• minor change is need on page 1; and</li> <li>• suggested amendments to the notes column.</li> </ul>
<a href="#"><u>Mention- 7 September 2018</u></a>		<ul style="list-style-type: none"> <li>• It was confirmed that any further deliberation on the NTWS in the Onsite Award should be left until after the Construction Award has completed its deliberations on the applications to vary clause 28 (substantive matters before the Full Bench).</li> <li>• The CFMMEU were encouraged to have discussions with those who have an interest in the matter, and noted at paragraph 69 of the transcript that the CFMMEU is wanting to vary the schedule an application should be made to vary it;</li> <li>• Matter will be listed for mention in 2-3 weeks for report back.</li> </ul>
<a href="#"><u>CFMMEU Correspondence – 26 September 2018</u></a>		<ul style="list-style-type: none"> <li>• Noted cannot attend mention, and provided a summary report back.</li> </ul>
<a href="#"><u>Mention- 27 September 2018</u></a>		<ul style="list-style-type: none"> <li>• The parties were encouraged to regroup, and will relist the matter for October 2018.</li> </ul>
<a href="#"><u>Mention- 23 August 2019</u></a>		<ul style="list-style-type: none"> <li>• The parties were asked to consider a report back on a without prejudice basis on what is agreed and what is not agreed. To ensure the parties are focused on the right issues and everyone has a fair opportunity to say what they want to say about it;</li> <li>• It was agreed between the parties a joint agreed report will be provided within six to eight weeks; and</li> <li>• Following the mention the CFMMEU, HIA, and MBA engaged in further discussions (on the same day) about moving forward in terms of the NTW schedule. The parties undertook to have further discussions following the mention.</li> </ul>





## DIRECTIONS

*Fair Work Act 2009*

s.156 - 4 yearly review of modern awards

**4 yearly review of modern awards – National Training Wage**  
(AM2016/17)

JUSTIC ROSS, PRESIDENT  
VICE PRESIDENT HATCHER  
COMMISSIONER HUNT

SYDNEY, 22 NOVEMBER 2019

The Commission makes the following directions:

1. Any party seeking to provide evidence in support of an award specific NTW schedule for the Joinery Building Trades Award 2010 and Mobile Crane Award 2010, shall file such evidence in the Commission by **5.00pm Wednesday 15 January 2020.**
2. Interested parties are to file any submissions in reply including any evidentiary material in the Commission by **5.00pm Wednesday 12 February 2020.**
3. All submissions and evidence shall be sent to [amod@fwc.gov.au](mailto:amod@fwc.gov.au)
4. The parties are granted liberty to apply to vary these directions.

PRESIDENT